

## Missouri Medical Malpractice Joint Underwriting Association

### Minutes for the Meeting of July 1, 2004

- Location:** Central Conference Room of the Missouri Department of Insurance  
Room 530, Truman State Office Building  
Jefferson City, Missouri
- Time:** 10:10 a.m.
- Attending:** Bill Turley, Chairman (*via teleconference*) [Shelter Insurance  
(Board) Companies/NAII]\*  
Paul Blume (*via teleconference*) [AIG/Unaffiliated Companies]  
Craig Kjellberg (*via teleconference*) [State Farm Ins./Unaffiliated Cos.]  
Dennis Smith (*via teleconference*) [Missouri Employers Mutual/AIA]  
Patty Williamson (*via teleconference*) [Uhlemeyer Services, Inc./AIA]
- (MDI Staff)** Kevin Jones, General Counsel, Missouri Department of Insurance (MDI)  
Susan Schulte, Chief, MDI Property & Casualty Section  
Mark Doerner, Senior Counsel, MDI P&C Section
- (Audience)** Keith Wenzel (*via teleconference*) Hendren & Andrae  
Mike Granacher (*via teleconference*) Marsh  
Sheryl Manger (*via teleconference*) Marsh  
Glenda Hartl (*via teleconference*)  
Steve Divine (*via teleconference*) Savers Property & Casualty Ins. Co.

The meeting began at approximately 10:10 a.m., after Chairman Turley joined the teleconference. He observed that several Board members, various employees at Marsh and MDI staffers had recently traded numerous telephone calls and e-mails over a question raised by Marsh. The question concerned coverage of providers who practice both in Missouri and in other states. The specific case concerned a pathologist who practiced part of the time in St. Joseph, Missouri and part of the time in Ft. Leavenworth, Kansas. The pathologist had coverage for his Kansas exposure already, and wanted to apply to the MMM JUA for his Missouri exposure.

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\* Material in brackets following the names of Board members indicate the insurance companies they work for and then the insurance industry trade groups that they are representing under Section 383.175, RSMo.

The problem was that a provision of the Missouri JUA's Plan of Operation seemed to preclude the JUA from insuring him. Subsection 1 of Section 14 of the Plan provided, in pertinent part, that:

A health care provider shall be eligible for coverage from the Association if the health care provider possesses the following characteristics at the time of application for coverage:

- (1) Is a duly licensed as a health care provider under Missouri law;
- (2) Has a professional health care practice which is located *solely* within the state of Missouri; [Emphasis added.]

Chairman Turley indicated that his initial understanding was that the language quoted was intended to cover only Missouri exposures, but not to limit providers from practicing in other states. But, whatever the intent, the actual wording in the Plan seemed to preclude coverage for multi-state practices. A modification to the wording to allow multi-state practices, while insuring only the Missouri portion of the practice, was a logical way to address the problem.

Chairman Turley also mentioned discussions with Paul Blume regarding the possibility that a non-Missouri court might be the venue for a suit against a provider insured by the MMM JUA. The Chairman pointed out that such a scenario was possible even without any modification to the Plan to cover the Missouri portion of a multi-state practice. (For example, he said Kansas law allows a doctor to be sued where he resides, and many doctors who practice in Missouri reside on the Kansas side of the state line in the Kansas City area.) Paul said he had no problem with the notion of amending the Plan, particularly if we can get proof of insurance regarding the other-state practices. Chairman Turley indicated he had circulated by e-mail draft language that would do just that.

Sheryl Manger of Marsh stated the way she would accomplish this would be to require the health care provider to provide a "certificate of insurance" to the MMM JUA from the other-state insurer that will notify the MMM JUA should the other coverage be cancelled. The MMM JUA would also require proof of continued other-state coverage at renewal of the JUA's coverage.

Paul Blume moved and Patty Williamson seconded a motion to change the Plan of Operation to cover the Missouri portion of a multi-state practice, subject to proof of coverage in any other states. The motion passed on a voice vote without opposition. Mark Doerner said he would present Chairman Turley's draft language to the Director the same day for the Director's approval.

[Note: Later the same day, the Director of the Missouri Department of Insurance approved the changes to subsection 1 of Section 14 of the Plan of Operations discussed above, as well as another change to that same subsection previously approved by the Board on April 12, 2004. The language of Section 14 and the changes made are set forth below:

**Section 14. Basic Underwriting Standards.**

1. A health care provider shall be eligible for coverage from the Association if the health care provider possesses the following characteristics at the time of application for coverage:

(1) ~~[Is a duly licensed as a health care provider under Missouri law]~~ Be duly licensed or registered as a health care provider under Missouri law and meet the definition of a “health care provider” set forth in Section 383.150, RSMo;

(2) Has a professional health care practice which is located ~~[solely]~~in whole or in part within the state of Missouri;

(3) Is seeking professional liability or related coverages, through the Association, only for Missouri activities or premises;

(4) Provides proof of similar coverages for all professional activities rendered and premises situated in other states;

~~[(3)]~~ (5) Pays the premium or portion thereof required under the underwriting manual of the Association;

~~[(4)]~~ (6) Has no unpaid, uncontested premium due for prior insurance;

~~[(5)]~~ (7) Agrees to participate in any loss control steps or programs required by the Association; and,

~~[(6)]~~ (8) Conforms to any other reasonable underwriting guidelines in the underwriting manual. ]